

DEPARTMENT OF THE ARMY
HEADQUARTERS DEVENS RFTA
Devens, Massachusetts 01433-5000

Civilian Personnel
OVERTIME PAY

SUMMARY: This memorandum prescribes policies, responsibilities and procedures governing the administration of overtime for civilian employees. Most of the material included in this memorandum duplicates that contained in higher level regulations. It has been consolidated here for ease of reference by users. Changes to this memorandum will be made at regular intervals as pertinent policies, procedures and responsibilities are changed by higher level regulations. Pending any future changes required to this memorandum the provisions of changes of higher level regulations will be controlling.

APPLICABILITY: This memorandum applies to all civilian employees paid from appropriated funds and serviced by the Civilian Personnel Office, Devens, MA. If employees of an organization are represented by a union with a valid and binding contract, the provisions of the contract concerning negotiable subject areas will be observed where they differ from this memorandum.

SUGGESTED IMPROVEMENTS: The proponent of this memorandum is the Civilian Personnel Office. Users are invited to send comments and suggested improvements on DA Form 2028 (Recommended Changes to Publications and Blank Forms) directly to Civilian Personnel Office, ATTN: AFRC-FMD-CP, Devens, Massachusetts 01433-5240.

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CHAPTER 1

GENERAL POLICIES

1-1 Purpose. The purpose of this memorandum is to establish an overtime pay policy, which recognizes the differences and interrelationships between the Fair Labor Standards Act (FLSA) and Title 5, U.S. Code. The following paragraphs set forth in some detail the provisions of statutes and regulations relating to overtime. It must be recognized that this is not a definitive treatment; the statutes and implementing OPM directives are extensive and complex, and are only abstracted and summarized here. Questions or actual situations of a complicated or unusual nature, should be referred for resolution to the Civilian Personnel Office.

1-2 Policy.

a. All levels of management will make a conscientious and resourceful use of available means to accomplish workloads within the normal working hours. Overtime shall be authorized only in instances of real necessity, such as urgent missions of the Command, emergencies, the safeguarding of life and property, and for situations when substantial savings can be demonstrated by the use of overtime on an individual basis.

b. Holidays. Overtime work required during a weekend period which includes a holiday on Friday or Monday shall not be scheduled so as to require work on the holiday unless essential for completion of required work or for continuity of the work effort.

c. Annual Leave. Annual leave usage will be managed in such a manner that leave usage will not contribute to the need for overtime.

d. Alternative. Substitution of the following types of work for overtime work shall be considered with reference to effectiveness in meeting schedules and results in overall savings:

- (1) Utilization of part-time, intermittent, and full-time employees in temporary positions.
- (2) Maximum use of shift work.
- (3) Contract work, if not in conflict with generally accepted practice of government employment.

e. Approved Purpose. Actual use of overtime must be in accordance with the purpose for which it was approved.

f. Overtime Assignments. In general, scheduled overtime assignments shall be rotated fairly and equitably to all employees in their particular job rating and in their assigned work area, understanding that unforeseen requirements may preclude an automatic rotation of overtime assignments. Suitable records of overtime worked and refused must be maintained by supervisory employees of the sections to assure that each employee receives substantially the same consideration.

g. Commanders, Directors and Special Staff are delegated the authority to approve overtime. This authority may not be redelegated. The use of overtime must be appropriately recorded and documented. The signature of the Commander, Executive Officer, Director, Special Staff head on the time and attendance report will satisfy the requirement that the overtime had been duly ordered and approved. The above approval authority and documentation responsibilities also apply to the use of compensatory time.

1-3 References.

- a. FPM Supplement 990-2; CPR 990-2, Book 550, Pay Administration
- b. Title 5, U.S.C., Chapter 55
- c. CFR Parts 532, 550 and 551

CHAPTER 2

FAIR LABOR STANDARDS ACT (FLSA)

2-1 Background. Overtime pay for Federal employees has been provided for in Title 5, U.S. Code (U.S.C.) as implemented by the Federal Personnel Manual (FPM) Chapter 550, and Supplements. With the passage of the Fair Labor Standards Amendments of 1974 (Public Law 93-259 effective May 1, 1974), Federal employees became subject to the Fair Labor Standards Act (FLSA) in addition to the provisions governing overtime work and compensation contained in Title 5, U.S.C.

2-2 Impact on Employee Entitlement. The FLSA, as amended by Public Law 93-259, did not repeal, amend, or otherwise modify any existing Federal pay laws. However, it implemented a requirement to determine which employees are “nonexempt” and which are “exempt” from the minimum pay and overtime provisions of the Act. The FLSA established a minimum standard to which non-exempt employees are entitled. To the extent that if the FLSA provides a greater pay benefit to a nonexempt employee (e.g., a higher overtime rate) than the benefits payable under other existing pay rules, the employee is entitled to the FLSA benefit. If other existing pay rules provide a greater benefit, the employee continues to receive that benefit. Exempt employees are paid for overtime work by application of FPM Supplement 990-2, Book 550, Pay Administration.

2-3 Impact on Management Responsibility.

a. Managers must ensure that work is not performed when it is not needed and when they do not want it performed. FLSA gives special emphases to this continuing responsibility.

b. Under FLSA, management cannot accept the benefits of a nonexempt employee's work without compensating the employee for that work. It is not sufficient to issue a rule that employees covered by the Act may not perform work outside normal work hours unless ordered to do so, or that they may not perform such overtime work without a clear indication from the responsible manager or supervisor that it will be approved after the fact. Management must assure that supervisors enforce that rule.

c. FLSA introduced a new concept regarding overtime work: A nonexempt employee becomes entitled to overtime compensation (for hours worked in excess of 40 a week for all work which management “suffers or permits” to be performed; therefore, any work performed prior to or after the established shift hours or during the prescribed lunch period by an employee covered by the overtime provision of the Act for the benefit of the agency, whether requested or not, is working time if the manager or supervisor knew of or had reason to believe it was being performed. The Act provides that an employee can seek relief directly from the courts for overtime work performed for which the employee feels he/she had not been properly compensated.

d. It is important to emphasize that the FLSA does not in any way diminish a supervisor's responsibility for ordering or authorizing overtime work. The FLSA simply adds an additional responsibility to supervisors, i.e., to ensure that overtime work is not, in fact, performed, except when payment for overtime is intended.

e. Supervisors must keep accurate records concerning the hours worked by their “nonexempt” employees.

CHAPTER 3

ENTITLEMENT TO OVERTIME

3-1 Under Title 5, U.S.C.

a. A General Schedule or Wage Grade employee is generally entitled to overtime pay (except as noted below) for hours of work officially ordered and approved in excess of 40 hours in an administrative workweek or in excess of 8 hours in a day.

b. An employee who is absent on paid leave (including legal holidays, officially established nonworkdays, annual or sick leave, or compensatory time off) during a regularly scheduled tour of duty remains entitled to earn overtime pay during that administrative workweek.

c. An employee who is absent on unpaid leave (e.g., LWOP, AWOL, suspension) during his regularly scheduled tour of duty must make up that time in work performed during the administrative workweek but outside his regularly scheduled tour of duty before becoming entitled to earn overtime pay in that administrative workweek.

d. Title 5, U.S.C. generally prohibits the payment of overtime to an employee assigned for training or for the period of such training except when specifically authorized by the Office of Personnel Management (OPM). This statute has been determined by the OPM to prohibit payment of overtime pay to an employee assigned for training regardless of whether the employee's eligibility for overtime pay is based on Title 5, U.S.C. or FLSA.

e. An employee who performs call back overtime (irregular or occasional overtime work on a day when no work or overtime was scheduled and for which he/she must return to his/her place of employment) is entitled to pay for a minimum of two hours overtime, even though he/she does not in fact work that long.

3-2 Under FLSA.

a. A nonexempt employee is entitled to overtime compensation (for hours worked in a week in excess of 40 hours). "Hours worked" includes all the time during which he/she was "suffered or permitted" to work for the agency.

b. Any absences from duty are not periods of work. Excused absences with pay (holidays, annual or sick leave, or other paid leave) are not "hours worked" under FLSA even though the employee is compensated for these hours. Bona fide meal periods are not considered "hours worked" if the employee is completely relieved from duty (except for rare or infrequent emergency calls).

c. Overtime work is "suffered or permitted" if an employee performed work in excess of 40 hours in an administrative workweek, for the benefit of the Government outside of regularly scheduled duty hours or during meal periods, whether such work was requested or not, if the manager or supervisor knew or had reason to believe that such work was being performed, or if the work product was accepted even though it was not known that the employee had worked overtime to do it. Under FLSA, management cannot accept the benefits of such work without compensating the employee. Management may not avoid this responsibility by issuing a rule that nonexempt employees may not work outside normal hours unless requested to do so: Supervisors must enforce that rule.

3-3 Under Title 5, U.S.C. and FLSA If a nonexempt employee has worked in excess of 40 hours under both FLSA and Title 5, U.S.C., he is entitled to overtime pay under both statutes. The employee shall be compensated under that statute which provides the greater overtime pay benefit.

CHAPTER 4

OVERTIME PAY RATES

4-1 Under Title 5, U.S.C.

- a. For a General Schedule employee whose basic rate of pay does not exceed the rate of GS-10, step 1, the hourly overtime rate is 1 and 1/2 times the employee's basic pay rate.
- b. For a General Schedule employee whose basic pay rate exceeds the rate for GS-10, step 1, the hourly rate is 1 and 1/2 times the hourly basic pay rate for GS-10, step 1.
- c. For a Wage Grade employee, the hourly overtime rate is 1 and 1/2 times the employee's hourly rate of basic pay.
- d. The actual amount earned is computed by multiplying the hourly overtime rate by the number of overtime hours worked.
- e. Overtime pay of exempt employees will always be computed solely under the provisions of Title 5, U.S.C.

4-2 Under FLSA.

- a. The hourly overtime rate under FLSA is 1 and 1/2 times the hourly "regular pay rate" (see definition given in Appendix B).
- b. The actual amount earned is computed by multiplying the hourly overtime rate by the number of overtime hours worked.

4 -3 Under Title 5, U.S.C. and FLSA. If entitlement is under both laws, payment will be made under whichever results in the larger payment.

CHAPTER 5

COMPENSATORY TIME

5-1 Compensatory Time Off at the Request of the Employee.

- a. Basic employee entitlement to compensatory time off. It has been established that:
 - (1) There is no statutory provision under FLSA for granting compensatory time off in lieu of overtime pay.
 - (2) FLSA does not amend or rescind a General Schedule employee's entitlement to request compensatory time off for irregular or occasional overtime work under Title 5, U.S.C. Therefore, there are certain circumstances when an employee who is nonexempt under FLSA may be granted compensatory time off as a substitute for overtime pay under Title 5, U.S.C.
 - (3) Title 5, U.S.C. does not contain a provision for compensatory time off as a substitute for overtime pay for Federal Wage System Employees. These employees must be paid for overtime.
- b. Overtime pay entitlement solely under Title 5, U.S.C. If a nonexempt employee earns his/her overtime pay entitlement in a given workweek solely under Title 5, U.S.C., the activity may grant the employee's request for compensatory time off during the same or subsequent work week.
- c. Overtime pay entitlement solely under FLSA. If a nonexempt employee earns his overtime pay entitlement in a given workweek solely under FLSA, he/she must be paid for the overtime work. No compensatory time off is allowed.
- d. Overtime pay entitlement under both FLSA and Title 5, U.S.C. for nonexempt employees.

(1) If the overtime entitlement in a given workweek is greater under FLSA, the employee must be paid for the overtime work.

(2) If overtime pay entitlement in a given workweek is equal or greater under Title 5, U.S.C., compensatory time may be substituted for overtime pay.

e. Compensatory time off will be equal to the time spent in overtime work. Compensatory time off, when appropriate, will be substituted at a rate of one hour compensatory time off for each hour spent in irregular or occasional work.

f. Circumstances under which compensatory time off may be substituted for overtime pay.

(1) Compensatory time off within the same workweek. An employee may request compensatory time off from a scheduled tour of duty as an "offset" during the same workweek in which the overtime was worked. This entitlement arises when an employee works in excess of eight hours in a day, or completes 40 hours of work prior to the end of his scheduled weekly tour of duty. This entitlement will apply even though the employee may earn entitlement to overtime pay under the FLSA or may earn further entitlement to overtime pay under Title 5, U.S.C., during the same workweek.

(2) Compensatory time off during subsequent workweeks.

(a) For employees entitled to overtime pay solely under Title 5, U.S.C., the activity may grant, upon an employee's request, compensatory time off from his/her regularly scheduled tour of duty instead of payment for an equal amount of time spent in irregular or occasional overtime work.

(b) Compensatory time may be granted for overtime pay when a nonexempt employee's overtime pay entitlement under Title 5, U.S.C. (or other appropriate statute or regulation) is equal to or greater than his overtime pay entitlement under FLSA.

(1) Requirement for advance selection of compensatory time off. If a nonexempt employee has a potential overtime pay entitlement under both FLSA and Title 5, U.S.C. (or other appropriate statute or regulation), the employee must indicate whether he desires overtime pay or compensatory time off for overtime work, the overtime authorization to be submitted with the time card must include the following statement signed by the employee: "I request that I be granted compensatory time off for this overtime work. Signature: _____."

(2) Use of cutoff dates. It should be noted, when in a given workweek a nonexempt employee has any overtime pay entitlement under FLSA, even though his greater overtime pay benefit derives from Title 5, U.S.C., the agency may not establish a cut off date beyond which the employee will "...lose his right both to compensatory time off and to overtime pay ..." as provided in Title 5, U.S.C. While an agency may still set a cutoff date for the use of compensatory time off, if the compensatory time off is not used before that date, the employee shall be paid for the overtime pay under Title 5, U.S.C. at the rate at which it was earned. To deny the overtime pay under Title 5, U.S.C. would have the effect of also denying the employee any entitlement to pay under FLSA. The absolute minimum standard of FLSA will not permit this denial of overtime pay.

(3) Employee request to convert compensatory time off to pay. If a nonexempt employee initially elects compensatory time off, but prior to taking it off decides that the pay for the overtime work is preferable, the agency may pay the employee for that overtime work under Title 5, U.S.C. at the rate at which it was earned. However, if the agency does not elect to pay the employee for the overtime work, compensatory time off must be granted.

5-2 Compensatory Time Off at the Direction of the Agency.

a. If a General Schedule Employee (whose rate of basic pay is in excess of the maximum rate of basic pay of GS-10) performs irregular or occasional overtime work, the agency may continue to require that the employee take compensatory time off instead of overtime pay under the following circumstances:

(1) The agency may require that the employee take compensatory time off during the same workweek in which the overtime was worked; or

(2) If the employee's entitlement to overtime pay after completion of the workweek derives solely from Title 5, U.S.C., the employee must be granted compensatory time off within a reasonable period of time after the overtime work was performed.

b. If, after completion of the workweek, a nonexempt employee has any entitlement to overtime pay under FLSA, he/she cannot be required to take compensatory time off instead of overtime pay.

CHAPTER 6

TRAVEL

6-1 Under Title 5, U.S.C. the time that any employee (General Schedule or Wage Grade) spends in travel status away from the official duty station is considered "hours of work" for determining overtime entitlement only if:

a. The travel is within the employee's regularly scheduled tour of duty (including regularly scheduled overtime); or

b. The travel involves the employee's performance of actual work while traveling;

c. It is incident to travel that involves the performance of work while traveling;

d. It is carried out under arduous conditions; or

e. The travel results from an event which could not be scheduled or controlled administratively. Whenever possible, an employee's travel should be scheduled within his/her regular work hours. However, situations will develop where an employee will be required to travel outside his/her regular work hours, and that travel takes him/her away from his official duty station. If the travel meets the criteria for one of the above conditions, the travel time will be considered hours of work and payable; if not, the travel time is not payable and the reasons for requiring the travel must be recorded.

6-2 Under FLSA the time spent by a nonexempt employee in authorized travel may be considered "hours worked" is dependent on the kind of travel involved.

a. Normal travel by an employee going to and from work before and after the regular workday is a normal incident of employment, therefore, is not counted as "hours worked".

b. Time spent in authorized travel, as a part of a job assignment during the workday is counted as "hours worked". This applies to time spent traveling by an employee during regular working hours within the limits of the official duty station.

c. Time spent in authorized travel away from the official duty station involving work while traveling (e.g., driving a vehicle), is counted as "hours worked". Meal periods and under certain conditions sleeping periods or other non-duty periods, are not included in hours worked.

d. Time spent in authorized travel away from the official duty station to and from a temporary duty station, during the same day, is counted as "hours worked". Included are time spent as a passenger (by common carrier or automobile) and normal waiting time at common carrier terminals. Meal periods, normal home to work travel, and time spent waiting at common carrier terminals in excess of normal waiting periods are not included in "hours worked".

e. Time spent in authorized travel away from the official duty station to and from a temporary duty station, which requires the employee to be away overnight, is counted as “hours worked” only to the extent of the employee's regular working hours on working days and corresponding hours on non-work days. Meal periods and time spent waiting at common carrier terminals in excess of normal waiting periods are not included in “hours worked”.

f. For additional information and examples of the application of these principles see Appendix A of this instruction.

APPENDIX A

Examples of kinds of travel included as “hours of work” for nonexempt employees under FLSA:

1. Home to work (and return) - Normal Situation. Employee is required to drive a Government vehicle home to:
 - (1) Respond to emergencies immediately from his/her home.
 - (2) Transport other employees from home to work (or job site).
 - (3) Report to a designated meeting place to transport other employees or equipment to a job site.
2. From a Designated Meeting Place. Employee is required to report to a designated meeting place to be transported by Government vehicle to the job site; and while at the meeting place the employee will:
 - (1) Receive instructions.
 - (2) Pick up or carry equipment.
 - (3) Perform other work.
3. Within the Limits of the Official Duty Station (50-mile radius).
 - (1) From normal duty location to job site (and return).
 - (2) From job site to job site (and return).
4. Work Performed While Traveling Away From Official Duty Station.
 - (1) Driver of an automobile, truck, bus, etc.
 - (2) Pilot of an airplane, helicopter, etc.
 - (3) Pilot of a boat, barge, etc.
 - (4) Assistant driver, crew member, etc., assisting in the operation of a vehicle, bus, etc.
 - (5) Passenger sharing the driving of a vehicle is considered to be performing work for that portion of the trip during which he/she actually drives the vehicle.
 - (6) Other employees required to perform work while traveling; e.g., courier carrying classified documents, guard escorting a prisoner, security specialist guarding classified or valuable equipment in transit.
5. Passenger on a One-Day Assignment Away From Official Duty Station (From home and return)
 - (1) Normal waiting time at terminal prior to scheduled departure time of common carrier (any waiting time in excess of normal waiting time is not hours worked.)
 - (2) Travel time from terminal to temporary duty station.
 - (3) Travel by auto from official duty station to temporary duty station.

APPENDIX B

DEFINITIONS

1. Exempt Employee is an employee in an executive, administrative or professional position who is exempt from the provisions of the Fair Labor Standards Act (FLSA).
2. Nonexempt employee is an employee covered by the provisions of the Fair Labor Standards Act. (The official position description (DA 374) will indicate if a position is “exempt” or “nonexempt”).
3. Basic Pay Rate is an employee's scheduled basic or straight time hourly rate of pay, not including premium pay (additional pay for night, Sunday or holiday work, or overtime) or hazard pay differential.
4. Regular Pay Rate for computing overtime payment under FLSA, is the hourly rate derived by adding up all payments due for all hours of actual work in an administrative work week, and dividing by the total hours of actual work for the week. Included payments consist of basic pay, night shift differential, Sunday premium pay (plus other types of payment not generally applicable to employees) and hazard pay differential. Excluded are additional pay for overtime work in excess of 8 hours per day or 40 hours per week; payments for periods of nonwork, e.g., sick leave, annual leave, holidays (however, if an employee works on a holiday, an amount is included equal to the hours actually worked multiplied by the basic pay rate), and other paid absences; cash awards; travel and per diem expenses; and call-back overtime payments for hours not actually worked.
5. Overtime under Title 5, U.S.C. is an employee's scheduled basic or straight time hourly rate of pay, not including any premium pay or any hazard pay differential.
6. Overtime under FLSA consists of hours of work in excess of 40 hours which the employee has actually worked in an administrative workweek.
7. Regularly Scheduled Overtime is that overtime which is established as part of an employee’s regularly scheduled tour of duty. It is overtime work which is authorized in advance and scheduled to recur on successive days or after specified intervals.
8. Irregular or Occasional Overtime is overtime work that is not part of an employee's regularly scheduled administrative workweek. “Call-back” overtime and “suffer or permit” overtime are specifically categorized as irregular or occasional overtime.
9. “Suffer or Permit” Overtime Under FLSA is unauthorized overtime work performed by a nonexempt employee in excess of 40 hours in an administrative workweek, which the manager or supervisor knows of or has reason to believe is being performed, and/or accepts the results of the work. While this would not be paid for under Title 5, U.S.C., FLSA requires this time be paid for at the appropriate overtime rate. It is the supervisor's responsibility to assure that overtime work is not performed, except when payment for such overtime is intended.
10. Compensatory Time Off, or compensatory time, is time off from an employee’s regularly scheduled tour of duty, granted to the employee for an equal amount of overtime work.

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